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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 74-866

EVELYN DEAN,
Petitioner,

vs.

STATE OF MISSISSIPPI,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Mississippi

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INTRODUCTORY STATEMENT

The Petitioner, Evelyn Dean, respectfully petitions for a Writ of Certiorari to review the judgment of the Supreme Court of Mississippi unofficially reported as *Dean v. State*, 300 So.2d 797 (Miss. 1974), decided September 16, 1974, rehearing denied October 14, 1974, affirming the murder conviction and life sentence made and entered by the Circuit Court of DeSoto County, Mississippi, on February 23, 1973.

The opinion of the Supreme Court of Mississippi is bound with this Petition and marked Appendix A.

Petitioner was permitted to remain at large on bond for a period of ninety days from October 14, 1974, to allow filing of this Petition.

JURISDICTIONAL STATEMENT

The judgment sought to be reviewed is the judgment of the Supreme Court of Mississippi affirming the murder conviction and life sentence of the trial court, dated October 14, 1974.

Petitioner believes that this Court has jurisdiction to review said judgment by Writ of Certiorari by virtue of 28 United States Code, Section 1257 (3).

QUESTIONS PRESENTED FOR REVIEW

(1) Whether Petitioner's Fourteenth Amendment rights under the United States Constitution were abrogated by the admission into evidence of alleged self-incriminatory statements made by Petitioner without full warnings as to her constitutional rights.

(2) Whether Petitioner's Fourteenth and Sixth Amendment rights under the United States Constitution were abrogated by the trial court's refusal to instruct the jury on Petitioner's theory of self defense.

(3) Whether Petitioner was accorded due process of law where the conviction rests on parol evidence of one witness which did not establish cause of death and the jury is not instructed as to what it must find before returning a verdict of guilty.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fifth Amendment to the Constitution of the United States, the Sixth Amendment to the Constitution of the United States, and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The Fifth Amendment provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Sixth Amendment provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining Witnesses in his favor; and to have the Assistance of Counsel for his defence."

Section 1 of the Fourteenth Amendment provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United

States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioners was indicted by the Grand Jury of DeSoto County, Mississippi, for the murder of one Bobby Gene Hugnes. On trial, Petitioner was convicted of murder and sentenced to life imprisonment. This conviction and sentence was appealed to and affirmed by the Supreme Court of Mississippi and she now petitions this Court to review the affirming action of the Supreme Court of Mississippi.

On May 7, 1972, at approximately 12:30 p.m., DeSoto County Sheriff Lee Meredith arrived at the residence of the Petitioner and Bobby Gene Hughes. His presence at Petitioner's residence was occasioned by a telephone call from Petitioner's brother to the sheriff's office, wherein Petitioner's brother stated "that his sister (Petitioner) had shot a man at Redwood Estates." Upon arrival at the residence, Sheriff Meredith started toward the door to the mobile home and, according to the Sheriff's testimony, Petitioner opened the door. Sheriff Meredith then asked Petitioner, "What has happened?" to which Petitioner replied, "I shot him."

After this verbal exchange of question and response, Sheriff Meredith entered the trailer and inquired as to the location of the person who had been shot. Petitioner directed the Sheriff to the deceased. After ascertaining that Bobby Gene Hughes was in fact dead, the Petitioner, at the Sheriff's request, walked to an adjoining room, obtained the gun and handed same to the

Sheriff. According to the Sheriff's testimony, it was at this point that he advised Petitioner of her constitutional rights. Petitioner testified on trial that the Sheriff never advised her of her constitutional rights. This testimony was corroborated by two defense witnesses. According to Mr. Robert Brown and attorney Robert Whitwell, Sheriff Meredith stated, "No, I did not advise her of her rights, because she did not say anything."

Following an on-the-scene investigation, Petitioner was incarcerated at the DeSoto County, Mississippi, jail at approximately 3:00 o'clock p.m. on the afternoon of the shooting incident. Petitioner was seen by Dr. Wadsworth, Sr., and was given "medication", ostensibly to quiet her down. At 5:00 o'clock p.m. of the same day, Petitioner, according to Sheriff Meredith's testimony, stated that she was afraid of Bobby Gene Hughes and that she didn't know whether the gun would shoot or not, and she had taken it out to be sure that it would shoot.

On trial, Sheriff Meredith testified, over Defendant's objection, about Petitioner's statements about shooting Hughes and practice firing the gun before the shooting incident. Sheriff Meredith further testified that in his opinion Hughes was lying on the couch at the time he was shot. There was no ballistics tests, autopsy, paraffin tests or fingerprint tests made and no evidence to establish the crime of murder other than these two alleged statements made by the Petitioner and the Sheriff's singular opinion.

In opposition to the State's case, Petitioner testified that the shooting was in self-defense as Hughes, after brutally beating Petitioner and threatening to kill her, was reaching for a heavy vase on a credenza behind the sofa. The only witness to the incident was Petitioner.

Defense counsel timely made a motion to suppress as evidence all statements of Petitioner to Sheriff Meredith on the grounds that Petitioner was not fully advised of her constitu-

tional rights by law enforcement officials and that she was not represented by counsel when questioned. A hearing was had on this motion prior to trial and the same was overruled by the trial court.

At the conclusion of the testimony the record is undisputed that:

1. The State of Mississippi did not prove that Bobby Gene Hughes died as a result of gunshot wounds;

2. That the jury was not instructed as to what they must find to be fact before they could return a verdict of guilty;

3. Petitioner at no time intentionally, willingly or knowingly relinquished, abandoned or waived any constitutional rights prior to giving any statement to Sheriff Meredith;

4. No evidence was admitted which refuted Petitioner's account of the shooting incident;

5. Petitioner had been given medication while in custody and gave Sheriff Meredith statements and information which were admitted into evidence against her;

6. The State's case rests on one witness, Sheriff Meredith, and his opinion.

Defense motions for a directed verdict of not guilty were overruled and the case was submitted to the jury. After a verdict of guilty and sentence of life imprisonment, Petitioner again moved the Court for a new trial on the grounds, *inter alia*, that:

1. The verdict of the jury was against the overwhelming weight of the evidence; and

2. The Court erred in overruling the objection by Defendant to the testimony of Sheriff Meredith about statements al-

legedly made by Defendant to Sheriff Meredith at the DeSoto County Jail within approximately two hours after Defendant had received sedation from a doctor.

This motion was overruled. The constitutional issues presented by this Petition have been presented throughout the proceedings against Petitioner.

REASONS FOR GRANTING THE WRIT

The rulings of the trial court and the Supreme Court of Mississippi are in direct conflict with this Court's ruling in *Miranda v. Arizona*, 86 S.Ct. 1602, 384 U.S. 486, 16 L.Ed.2d 694 (1966), in that the rulings would allow a law enforcement officer, after ascertaining by independent means the accused's name and whereabouts, to not give an accused warnings of constitutional rights, deny there was any "interrogation" and use statements and information gleaned against an accused in order to obtain a conviction.

The conviction of Petitioner in no way complies with the due process of law inherent in our system of jurisprudence or the due process of law as heretofore defined and applied in the State of Mississippi.

ARGUMENT

Petitioner, by and through counsel, timely and properly protected the record below in making necessary motions to suppress, objections to testimony and motion for new trial. All motions and objections had as their object the suppression as evidence of any and all statements of Petitioner to Sheriff Meredith from the on-the-scene statement of "I shot him" through her in-custody statement about practice firing the alleged mur-

der weapon prior to the day of the shooting incident. The trial court's actions in overruling these motions and objections was sustained by the Supreme Court of Mississippi. The statement, "I shot him," was ruled admissible in evidence as a free and voluntary statement made while Petitioner was not in custody and not under interrogation. The in-custody statements as to test firing the gun were ruled admissible as statements made freely and voluntarily after Petitioner had twice received the warnings required by *Miranda*, supra, despite the fact that Petitioner had been sedated two hours earlier while incarcerated.

Petitioner urges that the record does not support these rulings. To hold thus, the trial court and the Supreme Court of Mississippi absolutely rejected evidence that Sheriff Meredith admitted that no constitutional warnings were given Petitioner at any stage of the investigation, interrogation, arrest and incarceration. It may reasonably be assumed that if the warnings had been given Petitioner would not remember them or realize the significance of the warnings because of her distraught emotional state and medication administered by Dr. Wadsworth. However, there is no need to make any assumptions or presumptions as to the testimony of Petitioner's son and her attorney when they, without dispute, testified that Sheriff Meredith advised them that he had at no time advised Petitioner of her rights, that it wasn't necessary because she had made no statements.

Petitioner submits that once Sheriff Meredith was advised, by Petitioner's brother, that Petitioner had shot a man at Redwood Estates, the investigation of the shooting incident, be it criminal or not, focused on Petitioner as the accused. Further, we submit that Sheriff Meredith was under the absolute duty to inform Petitioner of her constitutional rights prior to any questioning, including the question as to "what happened". The Sheriff was aware that a shooting had taken place and that Petitioner had done the shooting before arriving at the scene. With his arrival

at the scene, a murder investigation, unbeknown to Petitioner, was already in progress.

Petitioner respectfully urges this Court to review the action of the trial and Appellate Courts for the reason that Petitioner's conviction and sentence rest squarely on statements made by Petitioner when she had not been informed of her rights under the Constitution of the United States, *Miranda v. State of Arizona*, supra, Rehearing Denied, 87 S.Ct. 11, 385 U.S. 890, 17 L.Ed.2d 121, and had not waived her constitutional rights. There is no showing of an intentional relinquishment or abandonment of a known right or privilege, *Johnson v. Zerbst*, 58 S.Ct. 1019, 304 U.S. 458, 82 L.Ed. 1461 (1938) nor is there any evidence that Petitioner's statements were given by her when she could voluntarily, knowingly and intelligently either waive or invoke her constitutional rights and because of the testimony as to medication, the contrary would be true. Certainly, it is well settled in *Miranda*, supra, and the cases adhering to *Miranda*, supra, that the burden is on the State of Mississippi, not Petitioner, to prove the warnings and then a knowing, intelligent waiver and that such waiver cannot be assumed on the basis of a record which is silent as to a waiver of constitutional rights.

The record here establishes without question that Petitioner's defense was that of self-defense. The only eyewitness to the shooting incident was Petitioner. The record reflects the following testimony by Petitioner:

"I said, 'Bob, let's get married. Let's don't wait. Your son is in jail; my son is in jail. Let's get married right now. We can do it tomorrow.' He said, 'I'm not going to marry you. I like things just like they are, and this is the way they are going to stay.' And I said, 'Bob, please, let's get married now and make a life for ourselves and our children.' And he said, 'God damn you, I said no, we are not getting married.' And he grabbed me by the shoulders and threw me into the table, and I fell around a chair onto the floor. He said, 'I had just as soon shoot your

God damned brains out right now.' I was lying there in the floor, and I didn't know what he was going to do. (The defendant was very emotional and crying uncontrollably at this point in her testimony.) With that, he just walked to the living room sofa and sat down. I got up off the floor. The bar door was open; and the gun was laying there; and I picked up the gun in my right hand. I picked up my purse and my keys, which he had thrown in the floor. He had taken the keys to our house off of them and the keys to his car. I started toward the bedroom to pack, and he said, 'Where in the God damned hell are you going', as I went through the living area, and he said, 'Come over here.' And I said, 'Well, maybe he wants to talk, and maybe we can work this out.' I wanted to. I didn't want to leave him. So, I walked over and sat down on the coffee table and tried to reason with him. I said, 'We have a good thing going. We have already bought our home. Let's don't throw it away.' As I began to try to talk to him and say, 'Let's don't do this', he said that he liked things like they were and he wasn't going go get married. I don't know, sir, whether he was on pills that morning or not, because I had been to the jail. I don't know how many drinks he had had, because I hadn't seen the man before I left home. All I know is, when I got home the mood he was in and how he treated me. I had never been this abused by him before.

"He was sitting on the couch, and he said, 'Come on over here, I want to talk to you.' I just sat down in front of him with the gun in this hand, and the car keys and my purse were in this hand, and I said, 'Bob, please, let's don't do this. It's too good for both of us. Let's don't. Let's make a life for our children and for ourselves. We love each other.' And when I said that, he said, 'You're not going anywhere.' And he reached backward to get something, and he said, 'I'll beat the God damned hell out of you if you even start out of here.' And he reached back like this, and when he did, I don't remember it, but the gun went off. I dropped the gun, and I was standing in the floor screaming."

As the close of testimony, Petitioner requested the following instruction in keeping with the defense theory of self-defense:

"If the Defendant believed that her life had been threatened or that she was threatened with great bodily harm, she had a lawful right to approach the deceased on any peaceable mission or purpose and to use a deadly weapon in defense of her life, or herself from great bodily harm from an attack made upon her by the deceased."

This instruction was "refused" by the trial court and the refusal was upheld by the Supreme Court of Mississippi. Petitioner submits that the refusal of this instruction, previously authorized and sanctioned in Mississippi in *Wood v. State*, 165 Miss. 363, 144 So. 545 (1932) was error and in violation of the Petitioner's right to trial by jury on the theory of self-defense. The action of the courts below is a directed verdict of guilty because such refusal denied Petitioner the right to present adequately her theory of defense. Other instructions do not cure this error because not one of the instructions told the jury that Petitioner may be justified in arming herself and approaching the deceased on a peaceable mission. In this refusal the trial court did not submit to the jury and the jury did not pass on the Petitioner's theory of self-defense. Such action has repeatedly been condemned. See *United States v. Blane*, 375 F.2d 249 (6th Cir. 1967); *United States v. McKenzie*, 301 F.2d 880 (6th Cir. 1962); and *United States v. Gollin*, 166 F.2d 123 (3rd Cir. 1948).

Unlike many cases before this Court on Petition for a Writ of Certiorari or Appeal, Petitioner's claim to denial of due process of law rests upon the trial and record as a whole. While Petitioner contends that each of the following constitutes a gross denial of due process of law, the record establishes clearly, unequivocally and patently the following denials of constitutional due process:

1. Petitioner stands convicted of murder and sentenced to life imprisonment on testimony and proof which do not establish that the deceased died as a result of gun shot wounds inflicted by Petitioner. Nowhere is it shown what instrumentality caused the death of Bobby Gene Hughes. Our system of due process requires the State in a murder prosecution to establish beyond a reasonable doubt not only that there was a death, but that the deceased met his death by criminal agency. See *Gilleylen v. State*, 255 So.2d 661 (Miss. 1971) and cases cited therein. For the State of Mississippi to convict Petitioner on evidence which does not establish cause of death it must rely on basic denial of due process.

2. Under the established criminal law and procedure of the State of Mississippi and the several states, before a person charged with a crime can be convicted, it is essential that every element of the crime must be established by either direct or circumstantial evidence. If one element of the crime essential to the conviction of the Defendant is established by circumstantial evidence, it is necessary that it be proven to the exclusion of every reasonable hypothesis other than that of guilt. See *Gilleylen v. State*, supra; *Love v. State*, 208 So.2d 755 (Miss. 1968); 23A *C.J.S. Criminal Law*, Section 1252, at page 624 (1961). The conviction of Petitioner cannot stand the test of due process because such conviction rests on an absolute disbelief and rejection of Petitioner's account of the shooting incident and an unqualified acceptance of the Sheriff's opinion, unsupported by ballistics tests, fingerprints, paraffin tests and autopsy, that the deceased was shot where he lay. Petitioner urges that her conviction and any other conviction which rests solely on opinion, conjecture, speculation and guess is neither sanctioned or authorized by an individual's right to constitutional due process of law.

3. The record also established that the jury which convicted Petitioner was never instructed as to what it must find as fact before it could return a verdict of guilty. No instruction for the

State as to the State's theory of murder can be found in the record. Without such instruction, the jury was left to wander aimlessly about guided by abstract principles of criminal law. Such procedure is without precedent and surely represents a denial of Petitioner's constitutional rights of the greatest magnitude.

CONCLUSION

Petitioner respectfully submits that a review of the record establishes that this Petition for Writ of Certiorari should be granted, and that the judgment of the Supreme Court of the State of Mississippi which affirmed the judgment and sentence of the Circuit Court of DeSoto County, Mississippi, should be set aside. In the event that direct review by Certiorari be denied, we plead that this Court will do so without prejudice to filing for Federal habeas corpus after exhausting State remedies.

Respectfully submitted

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